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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/025,896	02/18/1998	BILLIE JEAN LONGSTRETH		1132

7590 09/20/2002

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EXAMINER

GOODMAN, CHARLES

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 09/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

S.M.

<b>Office Action Summary</b>	Applicant No .	Applicant(s)
	09/025,896	LONGSTRETH, BILLIE JEAN
	Examiner Charles Goodman	Art Unit 3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 01 July 2002.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 6 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ .                                   |

## **DETAILED ACTION**

1. The Amendment filed on July 1, 2002 has been entered.

### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 1, 2002 has been entered.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - i. In claim 6, ll. 1-2, the phrase "a cabbage cutter, a non-powered, hand-operated kitchen utensil for cutting and chopping cabbage" is vague and indefinite in that it is not clear what is being claimed, the "cabbage cutter" or the "non-powered... kitchen utensil". Perhaps the phrase should read -- a cabbage cutter that is non-powered and hand operated for cutting and

chopping cabbage --. In ll. 7-8, the phrase “the device” lacks clear antecedent basis. Since it appears that the phrase is referring to the previously recited “cabbage cutter”, the phrase should read -- the cabbage cutter -- or -- cutter --. In ll. 18-19, the phrase “the operator” lacks clear antecedent basis. It should read -- an operator --.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. As best understood, claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by Seib et al.

Seib et al discloses a stoma flange cutter comprising all the elements claimed including, inter alia, a circular top (e.g. 38, 40); a circular bottom (e.g. at 42); a cylindrical body wall (36); a permanently affixed cap (18); cutting edge (42); and a removable protective cover (20).

Regarding the work being “cabbage”, this has not been given significant patentable weight, since it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Regarding the manner in which the cutting and chopping means is formed, this has not been given significant patentable weight, since in an apparatus invention, how a structure is formed is not germane to the structure itself.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. As best understood, claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rothje in view of Snyder.

Rothje discloses the invention substantially as claimed including, *inter alia*, a cylindrical body (1); a closed top and handgrip (e.g. at 6); an open bottom (at 2 in the Figures); and a cutting edge (2). See whole patent. However, Rothje lacks a cover for the cutting edge. In that regard, Snyder teaches a cylindrical shaped cutter having a protective cover (40) for the inherent purpose of protecting the user from potential harm via the cutting edge (30). Figs. 1-8, c. 2, ll. 35-38. Thus, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the device of Rothje with the cover as taught by Snyder in order to prevent potential harm to the user from the cutting edge.

9. As best understood, claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rothje in view of Seib et al.

Rothje discloses the invention substantially as claimed including, *inter alia*, a cylindrical body (1); a closed top and handgrip (e.g. at 6); an open bottom (at 2 in the Figures); and a cutting edge (2). See whole patent. However, Rothje lacks a cover for the cutting edge. In that regard, Seib et al teaches a cutter having a protective cover (20) for the inherent purpose of protecting the user from potential harm via the cutting edge (42) as well as for storage purposes. See c. 3, ll. 4-18. Thus, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the device of Rothje with the cover as taught by Seib et al in order to prevent potential harm to the user from the cutting edge and to facilitate storage of the device.

10. As best understood, claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bell in view of Collins and Snyder.

Bell discloses the invention substantially as claimed including, *inter alia*, a cylindrical body (1); a closed top and handgrip (e.g. at 4); and an open bottom (below 5 in Fig. 3). See whole patent. However, it appears that Bell lacks (A) a sharpened cutting edge and (B) a cover.

Regarding (A), although it appears that Bell lacks a sharpened edge, Collins teaches a kitchen utensil having a cylindrical body (10) and a sharpened cutting edge (14) which allows for an easier operation of cutting slicing, chopping, mixing and blending of foods. Figs. 1-3, c. 1, ll. 7-15 and c. 2, ll. 38-41. Thus, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the device of Bell with the sharpened cutting edge as taught by Collins in order to facilitate easier chopping of material.

Regarding (B), the modified device of Bell lacks a cover for the cutting edge.

However, Snyder teaches a cylindrical shaped cutter having a protective cover (40) for the inherent purpose of protecting the user from potential via the cutting edge (30).

Figs. 1-8, c. 2, ll. 35-38. Thus, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the modified device of Bell with the cover as taught by Snyder in order to prevent potential harm to the user from the cutting edge.

11. As best understood, claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bell in view of Collins and Seib et al.

Bell discloses the invention substantially as claimed including, *inter alia*, a cylindrical body (1); a closed top and handgrip (e.g. at 4); and an open bottom (below 5 in Fig. 3). See whole patent. However, it appears that Bell lacks (A) a sharpened cutting edge and (B) a cover.

Regarding (A), although it appears that Bell lacks a sharpened edge, Collins teaches a kitchen utensil having a cylindrical body (10) and a sharpened cutting edge (14) which allows for an easier operation of cutting slicing, chopping, mixing and blending of foods. Figs. 1-3, c. 1, ll. 7-15 and c. 2, ll. 38-41. Thus, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the device of Bell with the sharpened cutting edge as taught by Collins in order to facilitate easier chopping of material.

Regarding (B), the modified device of Bell lacks a cover for the cutting edge. However, Seib et al teaches a cutter having a protective cover (20) for the inherent purpose of protecting the user from potential harm via the cutting edge (42) as well as for storage purposes. See c. 3, ll. 4-18. Thus, it would have been obvious to the ordinary

artisan at the time of the instant invention to provide the modified device of Bell with the cover as taught by Seib et al in order to prevent potential harm to the user from the cutting edge and to facilitate storage of the device.

### ***Response to Arguments***

12. Applicant's arguments filed July 1, 2002 have been fully considered but they are not persuasive.

In response to Applicant's basic argument that Seib et al does not anticipate the claimed invention because Seib et al does not cut cabbage, i.e., Seib et al cuts specific dimensions, precise measured openings, etc.,<sup>1</sup> this argument is respectfully traversed. Again, it is emphasized that under 35 USC § 102, the workpiece is given no patentable weight. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Moreover, it is irrelevant how precise or specific Seib et al cuts a workpiece since nothing in the claims requires consideration of the dimensions of those features. On the other hand, Seib et al is fully capable of cutting workpieces of imprecise dimensions when Seib et al's device is used to cut random points in a given area in an overlapping manner. Furthermore, the "randomness" as Applicant argues is a direct result of the workpiece and the manner in which the invention is used. These considerations are not given patentable weight as noted above since Seib et al anticipates the claimed structure.

### ***Conclusion***

13. Kitchen Classics (web page advertisement, 1998), Ancona et al, Zaruba et al, and

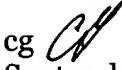
Harris have been cited as additional pertinent art. Kitchen Classics shows cookie cutters and storage tin having similar design as Applicant's invention; Ancona et al discloses a combination canister cover and cookie cutter having a cylindrical body and the cover having a sharp edge; Zaruba et al discloses a design for an ice cream sandwich maker having similar cylindrical body, hand grip portion, and cover; and Harris discloses a design for a trimming knife having a cylindrical body and a sharpened cutting edge.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Goodman whose telephone number is (703) 308-0501. The examiner can normally be reached on Monday-Thursday between 7:30 AM to 6:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap, can be reached on (703) 308-1082.

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9302. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-1148.

  
**Charles Goodman**  
**Primary Examiner**  
**AU 3724**

cg   
September 18, 2002

**CHARLES GOODMAN<sup>1</sup>**  
**PRIMARY EXAMINE<sup>1</sup>**

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<sup>1</sup> Amendment D, Paper No. 23, p. 1, ll. 15-25.